



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,004	06/24/2003	Richard C. Horian	7244-108	5737
167	7590	07/26/2005		
FULBRIGHT AND JAWORSKI LLP 555 S. FLOWER STREET, 41ST FLOOR LOS ANGELES, CA 90071			EXAMINER PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*Patel*

<b>Office Action Summary</b>	<b>Application No.</b> 10/606,004	<b>Applicant(s)</b> HORIAN, RICHARD C.	
	<b>Examiner</b> Nihir Patel	<b>Art Unit</b> 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 8-11, 15, 18, 19 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims **1, 15 and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rome (Des. 430,667).

Referring to claims **1, 15 and 25**, Rome discloses the applicant's invention as claimed with the exception of providing a plurality of at least four cylindrical tubes and that has a differential in compressive stress to strain ratio angularly about the cylindrical tube with the maximum ratio and minimum ration being at about 90 degrees to one another. After taking a closer look at the applicant's specification, the examiner discovered that the applicant has not established any criticality on why there must be four cylindrical tubes and why the tubes must have a differential in compressive stress to strain ratio angularly about the cylindrical tube with the maximum ratio and minimum ration being at about 90 degrees to one another. Therefore it would have been obvious to one in the ordinary skill of the art to have four cylindrical tubes or more depending on the size of the kit and to have a differential in compressive stress to strain ratio angularly about the cylindrical tube with the maximum ratio and minimum ration being at about 90 degrees to one another or any other ratio required for the invention to function to its fullest capability. Therefore the examiner comes to a conclusion that it is a matter of design choice.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rome (Des. 430,667) in view of Mercurio (US 3,457,917).

Referring to claims 8 and 9, Rome discloses the applicant's invention as claimed with the exception of providing each tube of the plurality of tubes being a right circular cylinder that includes a tab extending substantially parallel to the axial direction of the cylindrical tube from one end thereof. Mercurio discloses a nasal filtering device that does provide each tube of the plurality of tubes being a right circular cylinder that includes a tab extending substantially parallel to the axial direction of the cylindrical tube from one end thereof. Therefore it would have been obvious to modify Rome's invention by providing each tube of the plurality of tubes being a right circular cylinder that includes a tab extending substantially parallel to the axial direction of the cylindrical tube from one end thereof as taught by Mercurio in order to make it easier to remove the nasal filter.

Claims 10 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rome (Des. 430,667) in view of Wang (US 5,417,205).

Referring to claims 10 and 18, Rome discloses the applicant's invention as claimed with the exception of providing each tube of the plurality of tubes that includes a diametrically extending septum. Wang discloses an air filter for the nose that does provide each tube of the plurality of tubes that includes a diametrically extending septum (**see figure 1; even though Wang states that 11 is a rib in a broad definition rib 11 in Wang can be defined as a septum**). Therefore it would have been obvious to modify Rome's invention by providing each tube with a diametrically extending septum as taught by Wang in order to prevent snoring.

Claims 11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rome (Des. 430,667) in view of Wang (US 5,417,205) as applied to claims 10 and 18 above, and further in view of Mercurio (US 3,457,917).

Referring to claims 11 and 19, Rome discloses the applicant's invention as claimed with the exception of providing a septum that includes a tab extending substantially parallel to the axial direction of the cylindrical tube from one end thereof. Wang discloses a septum but fails to disclose a septum that includes a tab. However Mercurio discloses a nasal filtering device that does disclose a tab. Therefore it would have been obvious to modify Rome's invention by providing a septum as disclosed in Wang that includes a tab as disclosed in Mercurio that extends substantially parallel to the axial direction of the cylindrical tube from one end thereof in order to make the device stronger and easier to remove the nasal filter.

#### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

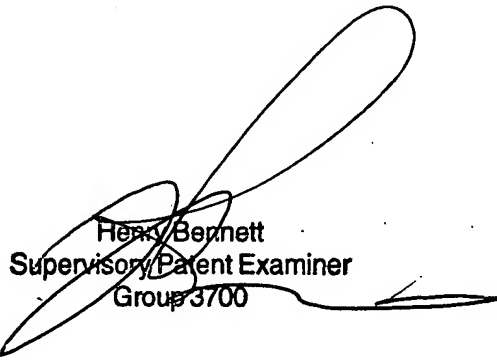
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3743

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP  
July 25<sup>th</sup>, 2005



Henry Bennett  
Supervisory Patent Examiner  
Group 3700